

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DR. SHIVA AYYADURAI,

PLAINTIFF,

v.

WILLIAM FRANCIS GALVIN
et al.,

DEFENDANTS.

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)
)
) Case No. 1:20-CV-11889-MLW
)
)

**MOTION OF CHILDREN’S
HEALTH DEFENSE FOR
LEAVE TO FILE BRIEF
AMICUS CURIAE AND
PROPOSED AMICUS BRIEF**

**Motion of Children’s Health Defense
For Leave To File Amicus Brief in Support of Plaintiff**

Pursuant to this Court’s order of May 13, 2021 in the above-captioned case, Children’s Health Defense (“CHD”), a nonprofit organization dedicated to ending childhood health epidemics, hereby moves for leave to file a brief *amicus curiae* in support of Plaintiff Shiva Ayyadurai and in opposition to Twitter’s effort to have itself dismissed from this case.

Children’s Health Defense is no *amicus* of Dr. Ayyadurai himself. On the contrary, CHD and Dr. Ayyadurai have clashed publicly and intensely in the past. But CHD has a deep, direct, special interest in the constitutional principles at stake in this case. CHD too has been censored by a social media company at the behest of, and working together as “partners” with, government officials. CHD too has been forced to bring suit to vindicate its First Amendment rights against this kind of public-private censorship alliance.

As a result, Children’s Health Defense has acquired substantial expertise in the law governing social media companies’ forum-selection clauses and the constitutionality of government/social-media partnerships. CHD therefore respectfully offers the proposed *amicus*

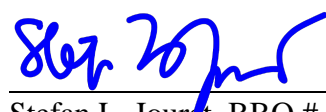
brief attached below in hopes of assisting the Court by demonstrating: (1) that Twitter’s forum-selection clause, mandating litigation of certain disputes in California, is both inapplicable and unenforceable here; and (2) that Plaintiff Ayyadurai has adequately, plausibly alleged that Twitter’s conduct in this case was unconstitutional state action.

It is “axiomatic that a state may not induce, encourage or promote private persons to accomplish what [the state] is constitutionally forbidden to accomplish.” *Norwood v. Harrison*, 413 US 455, 465 (1973). Yet that is precisely what is alleged in this case—and precisely what is happening, with increasing frequency, all over the country, because of an unholy, unconstitutional alliance between government officials and social media companies of the kind alleged here. As will be shown in the proposed brief, when state officials violate this “axiomatic” principle, state action is present, and both the officials and private parties who intentionally assist them may be sued under Section 1983.

In light of CHD’s significant interest in this case, and the useful information its brief would provide, CHD respectfully requests leave to file a brief *amicus curiae* and requests that the Court accept the accompanying proposed *amicus* brief for filing.

Dated: June 4, 2021

Respectfully Submitted,



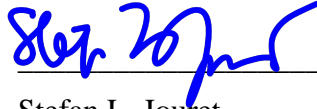
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CERTIFICATION PURSUANT TO LOCAL RULE 7.1(a)(2)

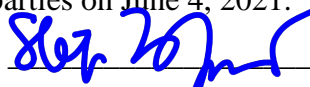
Pursuant to Local Rule 7.1(a)(2), I hereby certify that I emailed counsel for each of the above-captioned parties and pro se Plaintiff Shiva Ayyadurai a date and time for a conference call to narrow the issues in this motion. Only counsel for the Defendants Galvin, O'Malley and Tassinari responded or participated in a conference. His clients assented to the filing of this motion.



Stefan L. Jouret

CERTIFICATE OF SERVICE

I hereby certify that this document and its attachment, filed through the ECF system, will be sent electronically to the registered participants and that it will also be sent via email to the pro se plaintiff and counsel for the above-captioned parties on June 4, 2021.



Stefan L. Jouret